

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COREY O. WHITE	:	CIVIL ACTION
	:	
vs.	:	
	:	
CITY OF PHILADELPHIA. et al.	:	No. 02-4066

ORDER

AND NOW, this day of 2003, upon consideration of the Plaintiff's Motion Requesting an Order for the Production of Documents and Things Pursuant to Federal Rule of Civil Procedure 34 and the Defendants' Response thereto, it is hereby Ordered and Decreed that the Motion is Denied.

It is further Ordered and Decreed that Plaintiff's Motion for Appointment of Counsel is Denied.

By the Court:

NORMA L. SHAPIRO, J.

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CITY OF PHILADELPHIA. et al.	:	No. 02-4066

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION
REQUESTING AN ORDER FOR THE PRODUCTION OF DOCUMENTS AND THINGS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 34**

TO THE CLERK OF THE COURT:

Defendants, by and through the undersigned counsel, Robin B. Arnold, Deputy City Solicitor, hereby file a Response to Defendants' Motion Requesting an Order for the Production of Documents and Things Pursuant to Fed.R.Civ.P. 34. A Memorandum of Law dated April 10, 2003 is attached hereto in support of this Motion.

Respectfully Submitted,

ROBIN B. ARNOLD
DEPUTY CITY SOLICITOR
Attorney I.D. #59477
City of Philadelphia-Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
(215) 683-5447

Dated:

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COREY O. WHITE	:	CIVIL ACTION
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CITY OF PHILADELPHIA. et al.	:	No. 02-4066

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION REQUESTING AN ORDER FOR THE PRODUCTION OF
DOCUMENTS AND THINGS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 34**

Defendants submit that Plaintiff's Motion Requesting an Order compelling the production of documents be denied, since Defendants responded to the Plaintiff's discovery request within the applicable time period.

On or about February 27, 2003, counsel for defendants sent plaintiff a letter requesting an extension of time, until March 28, 2003, within which to respond to Plaintiff's Request for Production of Documents, attached as Exhibit "A". On March 10, 2003 counsel for Defendants confirmed that defendants would respond to discovery, reserving the right to make all appropriate objections, on or before March 28, 2003. See Exhibit "B". On March 20, 2003, counsel for defendants served plaintiff with Responses to Plaintiff's Request for Production of Documents. See Exhibit "C". In addition, defendants also served Initial Disclosures, and produced all documents identified in its Initial Disclosures. See Exhibits "C" and "D".¹ Based

¹ Although Defendants produced initial disclosures, Defendants note that under Fed.R.C.P. 26(a)(1)(E), both parties are exempted from complying with the requirements of discovery as set forth under Rule 26(a)(1), which includes initial disclosure requirements. In short, Defendants have provided disclosures and additional documents to plaintiff which were not required under the Rules, in addition to complying with plaintiff's discovery request. Defendants

on the above, Defendants have responded to plaintiff's discovery request. Accordingly, plaintiff's Motion to Compel must be denied.

As a final note, Plaintiff also includes as part of his Motion a request that his Motion for Appointment of Counsel be granted. In determining whether to appoint counsel for an indigent plaintiff, the district court must consider, as a threshold matter, the merits of the plaintiff's claim. Tabron v. Lt. Grace, 6 F.3d 147 (3d Cir. 1993). In this case, plaintiff claims excessive force against the defendant-police officers. Plaintiff, however, pled guilty to charges of simple assault and resisting arrest in connection with his arrest by the defendants on February 7, 2002. Therefore, plaintiff's claims against the plaintiff have very little merit. Moreover, this case, which involves claims of excessive force, is not complex, either in terms of investigation or the legal issues involved. See Arroyo v. Bachert, 1995 WL 295303 (E.D. Pa. 1995) (court denied plaintiff's unopposed motion for appointment counsel in case where plaintiff alleged that he was assaulted by a correctional officer at a prison facility. For these reasons, plaintiff's Motion for Appointment of Counsel should be denied.

WHEREFORE, Defendants respectfully request that the Court deny plaintiff's Motion and enter the attached Order.

Respectfully Submitted,

ROBIN B. ARNOLD
DEPUTY CITY SOLICITOR
Attorney I.D. #59477
City of Philadelphia-Law Department
1515 Arch Street, 14th Floor
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(215) 683-5447

Dated: 4/10/03

also note that the parties are not required to conduct a conference pursuant to Rule 26(f), again because of the exemption under Rule 26(a)(1)(E).

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CERTIFICATE OF SERVICE

Robin B. Arnold hereby certifies that service of a true and correct copy of the Defendants' Response to Plaintiff's Motion Requesting an Order for the Production of Documents Pursuant to Fed.R.Civ.P. 34 was made on the 10th day of April, 2003 to the plaintiff, pro se, by First Class United States Mail.

Corey O. White, Pro Se
EB 0632
SCI -Retreat
660 State Route 11
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Respectfully submitted,

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